United States Department of State

The Legal Adviser

Washington, D.C. 20520

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January 15, 1987

Mr. Robert Bartley
Editorial Page Editor
The Wall Street Journal
200 Liberty Street
New York, New York 10281

Dear Mr. Bartley:

Your editorial of December 31 entitled "The Soviets' Lawyers" contains a number of inaccurate assertions concerning the U.S. Government's role in litigation against the Soviet Union and its instrumentalities in U.S. courts.

Contrary to your suggestion, the State Department is not representing the Soviet Union, or invoking sovereign immunity in its behalf either in the Gregorian case, or in the Wallenberg (Von Dardel v. Soviet Union) case. A cursory reading of the United States' submissions in both those cases would have dispelled immediately such erroneous notions. The role of the U.S. Government in these suits is strictly limited to that which the Executive has played in litigation against foreign governments in U.S. courts since enactment of the Foreign Sovereign Immunities Act (the FSIA) in 1977. This Government has repeatedly, since that time, presented to courts in appropriate cases its views on the proper interpretation and application of the Act, and its impact upon the conduct of foreign affairs. Determinations of sovereign immunity are made exclusively by the courts, however, and not solely on the basis of U.S. Government representations.

Furthermore, the United States does not appear on behalf of foreign governments in such litigation. In fact, the United States actively seeks to convince foreign governments that they should appear and present any defenses they may have, including claims of sovereign immunity, directly to the courts. When we succeed in convincing them to do so, we have often asked the courts involved to set aside default judgments and to hear their claims on the merits. This serves the interests of justice, and plaintiffs with meritorious cases are far more likely to recover when a foreign state has responded. Some states refuse to appear in our courts, however, despite our best efforts, because they believe they are absolutely immune from certain claims. In such cases, the United States sometimes appears at the request of the court involved, or because an issue being litigated is of significance to the FSIA or our foreign relations.

In Gregorian, after discussion between the State Department and the Soviet Embassy, two of the Soviet state-owned commercial defendants agreed to retain private U.S. counsel to appear on their behalf and to file appropriate motions for relief. The United States has requested, in light of the Soviet appearances, that the court set aside the default judgment and consider the legal and factual arguments of the Soviet defendants on the merits, meanwhile suspending enforcement. If the court decides to grant this relief, it may still enter a decision in favor of the plaintiff on one or more of his claims.

In the Wallenberg case, the District Court entered a default judgment in November 1985 that directed the Soviet Union, among other things, to produce Wallenberg or his remains within 60 days and to pay 39 million dollars in damages. When the Soviet Union did not comply, plaintiffs filed a motion to hold the Soviet Government in contempt. Recognizing that entry of such an order would involve important issues of foreign policy, the Court specifically requested the views of the United States.

In response to the Court's request, the U.S. Government filed a Statement of Interest in which we informed the Court that the exercise of the contempt power in that case would be inconsistent with the purposes of the FSIA, and would be ineffective. We also advised the Court that it should not find the Soviet Union in contempt because it lacked jurisdiction under the FSIA to enter its original decision. We noted in our response that the U.S. Government "abhors the Soviet Union's unjust imprisonment of Wallenberg and continues, through governmental channels, to seek a full and satisfactory accounting of his fate."

Sincerely,

Abraham D. Sofaer

Drafted by:L/EUR:MBWest;CSchwab:L/SFP:BCRashkow
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